DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4699–F–02]

RIN 2506–AC12

Community Development Block Grant Program; Revision of CDBG Eligibility and National Objective Regulations

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the Community Development Block Grant (CDBG) program regulations to clarify the eligibility of brownfields cleanup, development, or redevelopment within existing program eligibility categories. In addition, this final rule makes changes to CDBG national objectives that relate to brownfields and clarifies regulatory language.

The final rule expands the ''slums or blight'' national objective criteria to include known and suspected environmental contamination, as well as economic disinvestment, as blighting influences. The rule also expands the definition of ''clearance'' to include remediation of known or suspected environmental contamination. The rule requires grantees to establish definitions of blighting influences and to retain records to support those definitions. In addition, an area slums or blight designation is required to be redetermined every 10 years for continued qualification. The regulatory amendments include the abatement of asbestos hazards and lead-based paint hazard evaluation and reduction as eligible rehabilitation activities. The final rule eliminates duplicative text concerning the treatment of lead-based paint hazards. Finally, the final rule requires that acquisition or relocation, if undertaken to address slums or blight on a spot basis, must be followed by other eligible activities that eliminate specific conditions of blight or physical decay.

The final rule follows publication of a July 9, 2004, proposed rule and takes into consideration the public comments received on the proposed rule.

On October 22, 1996, the Department published an interim rule, ''Community Development Block Grant Program for States; Community Revitalization Strategy Requirements and Miscellaneous Technical Amendments.'' This rule also makes final, with no changes, the provisions of that rule, which have been in effect for states on an interim basis since November 21, 1996.

DATES: *Effective Date:* June 23, 2006.

FOR FURTHER INFORMATION CONTACT: Steve Higginbotham, Community Planning and Development Specialist, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7184, Washington, DC 20410–7000; telephone (202) 708–1322 (this is not a toll-free number). Hearing- or speech-impaired individuals may access the telephone number listed in this section via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. Copies of studies mentioned in this rule are available for a fee from HUD User at (800) 245–2691 (a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

In the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998) (FY1999 Appropriations Act), Congress clarified the eligibility of environmental cleanup and economic development activities under the CDBG program. Section 205 of the FY1999 Appropriations Act stated:

> For fiscal years 1998, 1999, and all fiscal years thereafter, States and entitlement communities may use funds allocated under the community development block grants program under Title I of the Housing and Community Development Act of 1974 for environmental cleanup and economic development activities related to Brownfields projects in conjunction with the appropriate environmental regulatory agencies, as if such activities were eligible under section 105(a) of such Act.

On July 9, 2004, HUD published a proposed rule (69 FR 41434) for public comment to clarify the eligibility of brownfields cleanup, development, or redevelopment within existing program eligibility categories, as well as make changes to CDBG national objectives that relate to brownfields and clarify regulatory language.

Although cleanup and redevelopment of brownfields can already be accomplished using numerous categories of eligible activities, qualifying such an activity under the existing criteria has often been confusing and problematic. In addition, ambiguity in statutory and regulatory language has made grantees reluctant to use the ''slums or blight'' national objective to justify brownfields cleanup. To eliminate this ambiguity, HUD proposed to add project-specific assessment and remediation of known or suspected environmentally contaminated sites to the list of eligible activities under §§ 570.201(d) and 570.703(e), which addresses clearance activities. HUD also proposed to expand the ''slums or blight'' national objective criteria to include known and suspected environmental contamination as blighting influences. The proposed rule stated HUD's intent to accept, as blighting influences, signs of economic disinvestment, such as property abandonment, chronic high turnover rates; or chronic high vacancy rates in occupancy of commercial or industrial buildings; and significant declines in property values.

HUD proposed that grantees be required to establish definitions and retain records to substantiate how the area met the ''slums or blight'' criteria. Specifically, grantees would be required to define deteriorating or deteriorated buildings or improvements, abandonment of properties, chronic high turnover rates, chronic high vacancy rates, significant declines in property values, abnormally low property values, and environmental contamination. HUD also proposed that at least 33 percent of the properties in the designated area meet one or more of these conditions. Furthermore, HUD proposed the requirement that the ''slums or blight'' designation for the area be re-determined every 5 years.

In addition, the proposed rule sought to curb the use of acquisition or relocation by itself, when using the spot slums or blight national objective criterion. The proposed rule stated that if acquisition or relocation were undertaken to address the spot slums or blight national objective, it must be a precursor to another eligible activity that directly eliminates the conditions of blight or physical decay.

HUD received 11 comments to the July 9, 2004, proposed rule. Many commenters expressed concern over the proposal to require that at least 33 percent of the properties in a designated area meet the slum/blight definitions. Several commenters also stated that the 5-year designation period was too short. Other commenters were unclear as to what HUD meant in saying that acquisition or relocation must be a precursor to other eligible activities that eliminate specific conditions of blight or physical decay when addressing slums or blight on a spot basis. There were no objections to expanding the definition of ''clearance'' to include remediation of known or suspected environmental contamination.

II. Differences Between This Final Rule and the July 9, 2004, Proposed Rule

This final rule follows publication of the July 9, 2004, proposed rule, and takes into consideration the public comments received on the proposed rule. The noteworthy differences between this final rule and the July 9, 2004, proposed rule are summarized below. Additional information regarding these changes is provided in the discussion of the public comments in sections III through VI of this preamble.

1. *Requirement that 33 percent of properties in a slum/blight designated area must experience one or more of the conditions in the expanded list of slum/blight national objective criteria.* In response to significant public comment on this issue, this final rule revises the percentage of properties that must meet slum and blight conditions. The final rule reduces the percentage to the 25 percent threshold, which is consistent with the standard currently in place.

2. *Requirement that an area be re-determined to be a ''slums or blight'' area every 5 years for continued qualification.* This final rule revises the period of time between re-determination of ''slums or blight'' in response to several commenters' observation that 5 years is not enough time to remediate a blighted area. The final rule changes the re-designation period to 10 years.

3. *Technical correction in text at § 570.703(e).* In order to make the text at § 570.703(e) more consistent with the proposed text found at § 570.201(d), the final rule will change the subparagraph to read ''Clearance, demolition, and removal, including movement of structures to other sites and remediation of properties with known or suspected environmental contamination, of buildings and improvements on real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section. Remediation may include project-specific environmental assessment costs not otherwise eligible under § 570.205.''

III. Discussion of Public Comments Received on the July 9, 2004, Proposed Rule

The public comment period on the July 9, 2004, proposed rule closed on September 7, 2004. HUD received 11 comments. Commenters included five trade associations, five units of local government, and a bank. The summary of comments that follows presents the major issues and questions raised by the public commenters on the proposed rule.

The summary of public comments is organized as follows: Section IV of this summary discusses the public comments regarding changes to the national objective criteria; section V discusses the public comments regarding CDBG entitlement program-eligible activities; section VI discusses the public comments on national objective standards for addressing slums or blight on a spot basis; section VII discusses the public comments on additional reporting in the Integrated Disbursement & Information System (IDIS); and section VIII presents miscellaneous public comments.

IV. Comments on Changes to National Objective Criteria

A. Comments Regarding the Requirement That at Least 33 Percent of the Properties Throughout the Area Meet Certain Qualifying Conditions

Comment: This proposed requirement is counterproductive and will have an adverse impact on designation of slum/blight areas to receive CDBG assistance. The comments stated that a small percentage of deteriorated and/or abandoned properties along with other factors could cause blighting conditions in an area, contributing to the area's downward spiral. They cautioned that the increase would condemn many areas to continued deterioration until the threshold is reached for assistance under the CDBG program. One commenter questioned how the 33 percent standard is considered met and requested that HUD clarify what methodology grantees should use to determine whether a brownfields-related project activity meets the percentage standard.

Another commenter cautioned that increasing the threshold would prevent entitlements from proactively addressing areas on the fringe of disinvestment before they spiral downward while simultaneously being encouraged to cite violations on more buildings. One commenter suggested it is reasonable to assume that if 25 percent of properties in an area met one or more of these conditions, there would already be a significant disincentive to investment. Yet another commenter opposed the change, stating that the current definition was overly narrow.

HUD's Response: HUD believes that the expansion of the ''slums or blight'' national objective to recognize physical deterioration of improvements on private property and other economic disinvestment as blighting influences would make it easier for grantees to reach the proposed 33 percent threshold. Nevertheless, the Department acknowledges that there was universal opposition among commenters to the proposal to increase the threshold for the percentage of blighted properties in the delineated area from 25 percent to 33 percent. The Department also gave serious consideration to the concerns of grantees that the higher threshold might cause blighted areas to slip further into decline before the cause is addressed. Therefore, HUD has decided to allow the threshold to remain at 25 percent.

The methodology for determining compliance will change somewhat in that each grantee will now be required to establish its own definitions for the newly enumerated blighting conditions or influences, retain records to substantiate how the area meets the slum/blight criteria, and re-determine every 10 years whether the area still meets the regulatory criteria; however, the flexibility that grantees will have in defining deterioration will make it much easier to meet the national objective. To make it even easier to make that determination, the final rule refers more generally to buildings and ''properties'' rather than just buildings, because a parcel could contain buildings or be vacant.

Grantees should note that the final rule establishes the 25 percent threshold as a regulatory requirement. In the past, the percent threshold existed as a policy determination in the State and Entitlement Guides to Eligibility and National Objectives. The 25 percent threshold was created to answer grantees' confusion concerning how many buildings in an area had to be deteriorated to satisfy the requirement of §§ 570.483(c)(1)(ii) and 570.208(b)(1)(ii) that a ''substantial'' number be deteriorated.

B. Comments Regarding Proposal That Would Require Grantees To Redesignate Blighted Areas Every 5 Years

Comment: Five years is not enough time to begin and complete a redevelopment project. Nine commenters stated that the 5-year period for redesignation is too short. These commenters suggested time frames from 10 years to 40 years as being more appropriate. Seven commenters cited as reasons for requiring a longer redesignation period the length of time needed to remediate blighted properties or redevelop a blighted area. One commenter also cited the administrative burden of frequent redesignations.

HUD's Response: The Department's original intent in requiring a redetermination every 5 years was to make it easier for grantees to coincide their redetermination process with the Consolidated Planning process. However, HUD agrees with the

commenters that expressed concern that a blighted area may not *substantially* change in such a short period of time. However, HUD disagrees with the statements of some commenters that it could take up to 40 years to feel the effects of a project. Neighborhood growth and decay would suggest that a grantee use caution in applying decades-old data to justify CDBG expenditures. In addition, the Department's focus on performance and outcomes in its grant programs necessitate a sooner rather than later review of the impact of CDBG grant funds in assisted areas. HUD has determined that a 10-year redetermination process is a reasonable compromise.

Areas designated less than 10 years prior to the effective date of the final rule would be required to be redetermined on the 10-year anniversary of the original designation using the criteria in effect at the time of the redetermination. Any area designated more than 10 years prior to the effective date of the final rule must be redetermined to be blighted before any additional funds are obligated for new or existing activities.

Comment: ''Since the classification of a ''blighted area'' is derived from state law, HUD should also use state law in determining how often a ''blighted area'' requires reassessment and subsequently, reclassification.'' This commenter stated that under state law, time frames of 20 years to 40 years are not uncommon and that 5 years is an unreasonably short period of time. The commenter also stated, ''It often takes years to determine and remediate brownfield contaminated sites. And, as long as it takes for grantees to address environmental contamination, it takes even more time to secure funding,'' often from more than one source.

Another commenter stated that ''Many county entitlements survey hundreds of thousands of structures to identify blighted areas, a valuable but burdensome process. Many counties rely on census data and data collected by other federal agencies that are not released as often as every 5 years or that lag in their release dates. Re-determining slums and blighted areas every 5 years would add little value to county programs at a high expense to scar[c]e [sic] HUD resources.'' One commenter stated that the requirement would be an added regulatory and paperwork burden, and another commenter stated that HUD should ''allow states to pass this requirement onto their grantees, the local entities requesting the area designations.''

HUD's Response. HUD disagrees with the statement that HUD should allow states to pass on this requirement to its grantees. Judging by the wide divergence of opinion among commenters as to what constitutes a reasonable time period, allowing each jurisdiction to determine its own process would lead to inconsistent implementation. In addition, allowing jurisdictions to set re-designation periods of anywhere from 5 years to 40 years would greatly complicate oversight by HUD and state agencies.

C. Comments Regarding Additional Blighting Influences

Comment: Graffiti, trash, and debris and other additional blight factors should be added. One commenter stated that because graffiti, trash, and debris have a blighting influence, the definition of ''clearance'' as an eligible activity should include graffiti and blight abatement. Furthermore, the definition of ''clearance'' as an activity that meets the national objective criteria of elimination of slums and blight on a spot basis in § 570.208(b) should be expanded to include graffiti, trash, and debris removal.

Another commenter offered the following as additional blight factors: inadequate or non-existent alleyways; inadequate or non-existent parking in a business area; street and sidewalk design that discourages foot and vehicular traffic; inadequate lighting; unpaved streets, or streets and alleys in substantial disrepair; and zoning that contributes to inappropriate or incompatible uses, such as churches, and liquor stores in the same block.

HUD's Response: HUD does not consider transitory conditions such as graffiti-sprayed walls and litter-strewn, vacant lots to be the sort of long-term ''blighting influences'' that the Department is attempting to address in this rule. Painting or cleaning up the affected areas can rectify such conditions relatively quickly. However, the conditions specified in this rule pose a more long-term negative effect on an area that can easily lead to blight in adjoining areas.

Grantees must be aware of the distinction between allowing graffiti and litter to be used as blighting influences to qualify an area as slum/blighted versus carrying out activities to address these conditions in an area that has already been designated as slum/blighted. While the designation process is held to the higher standards of the Housing and Community Development Act of 1974 (HCDA), as amended, activities carried out within these areas can address conditions that fit the state and local definitions. It should be noted that HUD regards graffiti as a dangerous sign of gang activity and is committed to using CDBG funds for its removal. The Department ruled several years ago that CDBG funds may be used for graffiti removal under the eligibility category of property rehabilitation for private residences and commercial or industrial buildings, and under the category of public service when removing graffiti from public buildings.

As the Department has stated many times in the past, HUD does not accept inappropriate zoning, the absence of infrastructure, or the presence of vacant or undeveloped land as prima facie evidence of blighted conditions. The Housing and Community Development Act of 1974, as amended, sets a higher standard than is intended or required under some state laws, which have broader purposes that might include examples of inadequate planning such as those listed by a commenter as additional blight factors. HUD holds to the higher standards set by the HCDA.

V. Comments on CDBG Entitlement Program Eligible Activities

A. Comments Concerning the Addition of Lead-Based Paint Evaluation and Reduction and Asbestos Abatement as Eligible Activities Under the CDBG Entitlement Regulations

Comment: Four commenters offered support for addition of elimination of lead-based paint and asbestos as conditions detrimental to public health and safety.

B. Comments Regarding Remediation of Environmental Contamination as Eligible Activity

Comment: Support for the addition of remediation of environmental contamination to the list of eligible activities. Six commenters declared support for this provision. One commenter stated that HUD should define the types of environmental contamination that may be considered blighting influences and that HUD's referring to other federal programs may cause confusion. This commenter recommended that instead of requiring state and local housing agencies to define environmental contamination themselves, that housing authorities could simply adopt, by reference, existing state definitions for environmental contamination under their respective state's brownfields program or voluntary cleanup program. Another commenter suggested that HUD provide grantees the flexibility to determine what constitutes contamination without tying the CDBG

program to complicated environmental regulatory standards.

HUD's Response. HUD stands behind its belief that the Department has neither the statutory responsibility nor the technical expertise to define levels or types of environmental contamination. Grantees are responsible for determining what constitutes a contaminated property within their program and for establishing definitions for their program. The Department realizes that local grantee staffs are not necessarily experts, either; therefore, they are free to adopt other federal or state definitions. However, tying the definition of ''brownfields'' in the CDBG program to that of another federal or state program should be approached with caution, as other programs may have statutory purposes and limitations that are much different from CDBG.

VI. Comments on National Objective Standards for Addressing Slums or Blight on a Spot Basis

Comment: Acquisition and relocation must be a precursor to other eligible activities that directly eliminate the conditions of blight or physical decay when addressing slums or blight on a spot basis. One commenter stated that HUD should consider including some flexibility for unexpected situations, such as the need to relocate tenants when their apartments have suffered extreme damage from a fire, when the property is uninhabitable and cannot be rehabilitated, or in cases where environmental contamination has been discovered and tenants cannot return to unsafe conditions.

HUD's response. The final rule does not decrease the flexibility grantees have in handling unexpected situations; it simply requires that grantees plan for a subsequent use. In the past, HUD has allowed grantees to acquire contaminated land with the immediate goal of relocating residents under the spot blight national objective, primarily on occasions when residents are not of low- or moderate-income. However, even in these instances, future activities were usually planned, such as clearance or cleanup of contamination.

One commenter explained that while every local community would agree with the goal of improving neighborhoods after land acquisition or relocation takes place, there is a concern that this requirement could be misinterpreted (by HUD or local grantees) to eliminate critical, appropriate pre-development activities. Another commenter agreed that stand-alone property acquisition or relocation of occupants does not remedy blight by itself. However, the commenter expressed concern about being able to demonstrate a fully realizable plan at the beginning of a redevelopment effort in order to secure grant funding.

HUD's response. The final rule does not discourage acquisition and relocation as pre-development activities, nor does it require that a proposed plan be in place before CDBG funds are spent. Acquisition and relocation continue to be eligible spot slums or blight-addressing activities, but only when they are a precursor to other eligible activities that directly eliminate the conditions of blight or physical decay. However, ''stand-alone'' acquisition of a property or relocation of occupants, with no further action to rehabilitate, redevelop, demolish, or to undertake other eligible activities that directly eliminate the blighting condition(s) or physical decay of the property, will not qualify as meeting the spot slums or blight national objective. Other development activities that address the blighting conditions do not have to be funded with funds from the CDBG program, Section 108 Loan Guarantee program, Economic Development Initiative, or Brownfields Economic Development Initiative.

This requirement is not unprecedented in the CDBG program. In fact, §§ 570.208(d)(1) and (2), and 570.483(e)(2) and (3) refer generally to the national objective determination of acquisition and relocation being tied to the property's planned use. Also, the public benefit standards for economic development projects found in §§ 570.209(b)(3)(D) and 570.482(f)(4)(ii)(D) forbids ''acquisition of land for which the specific proposed use has not yet been identified.'' The final rule would not require grantees to have a proposed plan in place or be ready to move forward with the end-use at the time of acquisition or relocation, but it is the Department's sense that it would be prudent for a grantee to have a proposed plan for the property's re-use beforehand. HUD expects that some additional clearance or development activity will occur within a reasonable amount of time after the acquisition or relocation.

Comment: One commenter stated that the section of the final rule dealing with acquisition or relocation carried out under the spot slums and blight national objective needs clarification. The commenter asked whether direct treatment of a contaminated site without the necessity of acquisition of the site or relocation would be ineligible.

HUD's response. The Department does not mean to imply that any of the other eligible spot slums or blight-addressing activities has to be accompanied by acquisition and/or relocation. On the contrary, *if* acquisition or relocation occurs, it must be followed by another eligible activity that would directly eliminate the specific condition(s) of blight or physical decay. For instance, a grantee could clean up a contaminated site without acquiring the site; however, if the grantee acquired the site first, the project would be considered to be meeting the slum/blight national objective criteria only after clean-up occurred.

VII. Comments on Additional Reporting in IDIS

Comment: IDIS—Data collection. One commenter supported the addition of a data field to the Integrated Disbursement & Information System (IDIS) that would assist in determining the extent to which CDBG funds are used for brownfields-related activities. Another commenter sought clarification about what type of data pertaining to brownfields projects would be entered into the IDIS data field.

HUD's response. The IDIS system enables grantees to denote CDBG-funded activities that address brownfields.

VIII. Comments on Miscellaneous Issues

Comment: Rulemaking issue. A commenter requested that HUD publish a revised proposed rule prior to issuing a final rule and thereby allow another opportunity for public comment.

HUD's response. HUD allowed a reasonable time for citizens and interest groups to comment on the proposed rule. Since that time, the Department has carefully considered those public comments in the development of this final rule. Therefore, HUD does not feel that it is necessary to issue another proposed rule.

Comment: Clarification is still necessary. One commenter asked, ''The proposed rule appears to allow some site assessment costs to be eligible as planning costs, while others may be the actual project delivery costs * * * how should grantees distinguish between planning and project costs? Using what criteria? Will activities such as symposia, workshops, conferences, general site visits, general administration of Brownfields programs at the local level, training activities, and overall monitoring of Brownfields project progress be eligible under Planning * * * or may these costs be added to project delivery?'

HUD's response. HUD is not changing the recordkeeping requirements regarding differentiation between

general administration, planning, and project delivery costs. Instead, the Department is merely enlarging the scope of planning activities considered eligible under CDBG to include some site assessment costs. Grantees should use the same methodology as in previous years to determine whether an activity is considered a planning or project delivery.

Comment: Support for the proposed rule. In general, six commenters offered support for the rule, using adjectives such as ''positive,'' ''appropriate,'' and ''needed.'' One commenter stated that the proposed revisions ''clarify the confusing parts of the existing regulations.''

IX. Publication of Final Rule Concerning Community Revitalization Strategies Requirements and Miscellaneous Technical Amendments

On October 22, 1996, the Department published an interim rule, ''Community Development Block Grant Program for States; Community Revitalization Strategy Requirements and Miscellaneous Technical Amendments'' (61 FR 54913). The interim rule implemented the community revitalization strategies concept for the State CDBG program; it also made various technical amendments to correct or revise inaccurate or outdated regulatory citations. As an interim rule, it was effective on November 21, 1996, while providing an opportunity for public comment on the provisions of that rule, before putting them into final effect.

HUD received only one comment on the 1996 interim rule, and the comment supported the regulatory changes. In the intervening years, relatively few states have chosen to implement the community revitalization strategy concept in their program. HUD has not received any objections to the overall community revitalization strategy concept or to the specific regulatory provisions implementing it; rather, most states have chosen to take different approaches to the design and implementation of their programs. Therefore, this final rule makes final those interim provisions currently in effect for states, with no change.

The Community Revitalization Strategies portion of this final rule affects only the State CDBG program. Regulations for a comparable provision in the Entitlement CDBG program, Neighborhood Revitalization Strategies, have been in place for a number of years.

X. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2506–0077 and 2506–0085. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection weekdays between the hours of 8 a.m. and 5 p.m. in the, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism,'' prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This final rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, entitled ''Regulatory Planning and Review.'' OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Office of General Counsel, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the file must be scheduled by calling the Regulations Divisions at (202) 708–3055 (this is not a toll-free number).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program numbers applicable to the various components of the CDBG program are: 14.218, Entitlement program; 14.219, HUD-Administered Small Cities program; 14.225, Insular Areas program; 14.228, State program; 14.248, Section 108 Loan Guarantee program; and 14.246, Community Development Block Grants Economic Development Initiative.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community Development Block Grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

■ Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 570 to read as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 1. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5302–5320.

■ 2. Revise § 570.201(d) to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(d) *Clearance and remediation activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites and remediation of known or suspected environmental contamination. Demolition of HUD-assisted or HUD-owned housing units may be undertaken only with the prior approval of HUD. Remediation may include project-specific environmental assessment costs not otherwise eligible under § 570.205.

* * * * *

■ 3. Remove § 570.202(b)(7)(iv), and revise § 570.202(a)(3), (b)(2), and (f) to read as follows:

§ 570.202 Eligible rehabilitation and preservation activities.

(a) * * *

(3) Publicly or privately owned commercial or industrial buildings, except that the rehabilitation of such buildings owned by a private for-profit business is limited to improvement to the exterior of the building, abatement of asbestos hazards, lead-based paint hazard evaluation and reduction, and the correction of code violations;

* * * * *

(b) * * *

(2) Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, including smoke detectors and dead bolt locks, and renovation through alterations, additions to, or enhancement of existing structures and improvements, abatement of asbestos hazards (and other contaminants) in buildings and improvements that may be undertaken singly, or in combination;

* * * * *

(f) *Lead-based paint activities.* Lead-based paint activities pursuant to § 570.608.

■ 4. Revise the undesignated introductory paragraph of § 570.203 to read as follows:

§ 570.203 Special economic development activities.

A recipient may use CDBG funds for special economic development activities in addition to other activities authorized in this subpart that may be carried out as part of an economic development project. Guidelines for selecting activities to assist under this paragraph are provided at § 570.209. The recipient must ensure that the appropriate level of public benefit will be derived pursuant to those guidelines before obligating funds under this authority. Special activities authorized under this section do not include assistance for the construction of new housing. Activities eligible under this section may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination. Special economic development activities include:

* * * * *

■ 5. Amend § 570.204 by adding a new sentence following the semicolon at the end of paragraph (a)(2).

§ 570.204 Special Activities by Community-Based Development Organizations (CBDOs).

(a) * * *

(2) * * * activities under this paragraph may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination;

* * * * *

■ 6. Amend § 570.205 by revising the first sentence of paragraph (a)(4)(iv) and adding a new paragraph (a)(4)(viii) to read as follows:

§ 570.205 Eligible planning, urban environmental design, and policy-planning-management capacity building activities.

(a) * * *

(4) * * *

(iv) The reasonable costs of general environmental, urban environmental design and historic preservation studies; and general environmental assessment- and remediation-oriented planning related to properties with known or suspected environmental contamination. * * *

* * * * *

(viii) Developing an inventory of properties with known or suspected environmental contamination.

* * * * *

■ 7. Revise § 570.208(b)(1)(ii), (b)(1)(iii), and (b)(2) to read as follows:

§ 570.208 Criteria for national objectives.

* * * * *

(b) * * *

(1) * * *

(ii) The area also meets the conditions in either paragraph (A) or (B):

(A) At least 25 percent of properties throughout the area experience one or more of the following conditions:

(*1*) Physical deterioration of buildings or improvements;

(*2*) Abandonment of properties;

(*3*) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;

(*4*) Significant declines in property values or abnormally low property values relative to other areas in the community; or

(*5*) Known or suspected environmental contamination.

(B) The public improvements throughout the area are in a general state of deterioration.

(iii) Documentation is to be maintained by the recipient on the boundaries of the area and the conditions and standards used that qualified the area at the time of its designation. The recipient shall establish definitions of the conditions listed at § 570.208(b)(1)(ii)(A), and maintain records to substantiate how the area met the slums or blighted criteria. The designation of an area as slum or blighted under this section is required to be redetermined every 10 years for continued qualification. Documentation must be retained pursuant to the recordkeeping requirements contained at § 570.506 (b)(8)(ii).

* * * * *

(2) *Activities to address slums or blight on a spot basis.* The following activities may be undertaken on a spot basis to eliminate specific conditions of blight, physical decay, or environmental contamination that are not located in a slum or blighted area: acquisition; clearance; relocation; historic preservation; remediation of environmentally contaminated properties; or rehabilitation of buildings or improvements. However, rehabilitation must be limited to eliminating those conditions that are detrimental to public health and safety. If acquisition or relocation is undertaken, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination.

* * * * *

■ 8. Amend § 570.209 by adding a new paragraph (b)(2)(v)(N) to read as follows:

§ 570.209 Guidelines for evaluating and selecting economic development projects.

* * * * *

(b) * * *

(2) * * *

(v) * * *

(N) Directly involves the economic development or redevelopment of environmentally contaminated properties.

* * * * *

■ 9. Amend § 570.482 by:

A. Revising paragraph (c) to read as follows:

B. Removing and reserving paragraph (d);

C. Amending paragraph (f)(3)(v) by adding a new paragraph (N), to read as follows

§ 570.482 Eligible activities.

* * * * *

(c) *Special eligibility provisions.* (1) Microenterprise development activities eligible under section 105(a)(23) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) (the Act) may be carried out either through the recipient directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients).

(2) *Provision of public services.* The following activities shall not be subject to the restrictions on public services under section 105(a)(8) of the Act:

(i) Support services provided under section 105(a)(23) of the Act, and paragraph (c) of this section;

(ii) Services carried out under the provisions of section 105(a)(15) of the Act, that are specifically designed to increase economic opportunities through job training and placement and other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services; and

(iii) Services of any type carried out under the provisions of section 105(a)(15) of the Act pursuant to a strategy approved by a state under the provisions of § 91.315(e)(2) of this title.

(3) Environmental cleanup and economic development or redevelopment of contaminated properties. Remediation of known or suspected environmental contamination may be undertaken under the authority of section 205 of Public Law 105–276 and section 105(a)(4) of the Act. Economic development activities carried out under sections 105(a)(14), (a)(15), or (a)(17) of the Act may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination.

* * * * *

(f) * * *

(3) * * *

(v) * * *

(N) Directly involves the economic development or redevelopment of environmentally contaminated properties.

* * * * *

■ 10. Revise § 570.483(c)(1)(ii), (c)(1)(iv), and (c)(2) to read as follows:

§ 570.483 Criteria for national objectives.

* * * * *

(c) * * *

(1) * * *

(ii) The area also meets the conditions in either paragraph (c)(1)(ii)(A) or(c)(1)(ii)(B) of this section.

(A) At least 25 percent of properties throughout the area experience one or more of the following conditions:

(*1*) Physical deterioration of buildings or improvements;

(*2*) Abandonment of properties;

(*3*) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;

(*4*) Significant declines in property values or abnormally low property values relative to other areas in the community; or

(*5*) Known or suspected environmental contamination.

(B) The public improvements throughout the area are in a general state of deterioration.

* * * * *

(iv) The state keeps records sufficient to document its findings that a project meets the national objective of prevention or elimination of slums and blight. The state must establish definitions of the conditions listed at § 570.483(c)(1)(ii)(A) and maintain records to substantiate how the area met the slums or blighted criteria. The designation of an area as slum or blighted under this section is required to be redetermined every 10 years for continued qualification. Documentation must be retained pursuant to the recordkeeping requirements contained at § 570.490.

(2) *Activities to address slums or blight on a spot basis.* The following activities can be undertaken on a spot basis to eliminate specific conditions of blight, physical decay, or environmental contamination that are not located in a slum or blighted area: Acquisition; clearance; relocation; historic preservation; remediation of environmentally contaminated properties; or rehabilitation of buildings or improvements. However, rehabilitation must be limited to eliminating those conditions that are detrimental to public health and safety. If acquisition or relocation is undertaken, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination.

* * * * *

■ 11. Revise § 570.703(e), the introductory text in paragraph (f), and paragraph (l) to read as follows:

§ 570.703 Eligible activities.

* * * * *

(e) Clearance, demolition, and removal, including movement of structures to other sites and remediation of properties with known or suspected environmental contamination, of buildings and improvements on real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section. Remediation may include project-specific environmental assessment costs not otherwise eligible under § 570.205.

(f) Site preparation, including construction, reconstruction, installation of public and other site improvements, utilities or facilities (other than buildings), or remediation of properties (remediation can include project-specific environmental assessment costs not otherwise eligible under § 570.205) with known or suspected environmental contamination, which is:

* * * * *

(l) Acquisition, construction, reconstruction, rehabilitation or historic preservation, or installation of public facilities (except for buildings for the general conduct of government) to the extent eligible under § 570.201(c), including public streets, sidewalks, other site improvements and public utilities, and remediation of known or suspected environmental contamination in conjunction with these activities. Remediation may include project-specific environmental assessment costs not otherwise eligible under § 570.205.

* * * * *

Dated: May 16, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

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